IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1279 of 1996
to
FIRST APPEAL No. 1282 of 1996

with

FIRST APPEAL No.241 of 1997
to
FIRST APPEAL No.243 of 1997

with

FIRST APPEAL No.2213 of 2003
to
FIRST APPEAL No.2216 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PUNAJI SHAKARAJI & 2 - Appellant(s)
Versus
SPL.LAQ OFFICER,EXPRESS HIGH WAY & 1 - Respondent(s)

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Appearance :

MR GOPINATH M AMIN for Appellants (In First Appeals No.1279/96 to 1282/96 with First Appeals No.241/97 to 243/97)

MR NITIN M AMIN for Appellants (In First Appeals No.2213/03 to 2216/03)

MR SUNIT S.SHAH, GOVERNMENT PLEADER, for Respondent(s) – (In First Appeals No.1279/96 to 1282/96

MS TANUJA N.KACHCHHI, AGP, for Respondent(s) – (In First Appeals No.241/97 to 243/97

MS KRINA P.CALLA, AGP, for Respondent(s) – (In First Appeals No.2213/03 to 2216/03

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 02/12/2006

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. First Appeal No.1279 of 1997 to First Appeal No.1282 of 1996 filed by the claimants under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated November 23, 1995, rendered by the learned Second Joint District

Judge, Mirzapur, in Land Acquisition Case Nos.1241 of 1987, 1247 of 1987, 1251 of 1987, 1252 of 1987, 283 of 1988 and 284 of 1988, by which they have been awarded additional compensation at the rate of Rs.16.75 ps. per sq.mt. for their acquired lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.3/- per sq.mt. to Rs.5.50 ps. per sq.mt., by his award dated March 6, 1987. The claimants have claimed in these Appeals that they should have been awarded compensation at the rate of Rs.40/- per sq.mt. for their acquired lands.

2. First Appeal No.241 of 1997 to First Appeal No.243 of 1997 with First Appeal No.2213 of 2003 to First Appeal No.2216 of 2003 filed by the claimants are directed against the common judgment and award dated April 16, 1994,

rendered by the learned Assistant Judge, Ahmedabad (Rural) in Land Acquisition Case No.1234 of 1987 to Land Acquisition Case No.1250 of 1987 and Land Acquisition Case No.1253 of 1987, by which the claimants have been awarded additional amount of compensation at the rate of Rs.16.75 ps. per sq.mt. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.3/- per sq.mt. to Rs.5.30 ps. per sq.mt., by his award dated March 6, 1987. In these Appeals also, the claim of the claimants is that they should have been awarded compensation at the rate of Rs.40/- per sq.mt. for their acquired lands.

3. All these Appeals relate to the acquisition of lands from village Geratnagar, Taluka: Dascroi, District:

Ahmedabad, pursuant to publication of notification issued under section 4(1) of the Act in the official gazette on August 20, 1986 and as common questions of facts and law arise for consideration of the Court in these Appeals, this Court proposes to dispose them of by this common judgment.

4. The Executive Engineer, Road and Building, Express Highway, proposed to the Collector, Ahmedabad, to initiate proceedings for acquiring the lands of village Geratnagar, Taluka: Dascroi, District: Ahmedabad, for the public purpose of construction of Ahmedabad-Baroda Express Highway. The Collector, in turn, forwarded the said proposal to the State Government for its consideration. On consideration of the said proposal, the State Government was satisfied that the lands of village Geratnagar were likely to be needed for

the said public purpose. Therefore, a notification under Section 4 of the Act was issued which was published in the official gazette on August 20, 1986. The land owners, whose lands were proposed to be acquired, were served with notices. On service of notices, they opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5A(2) of the Act to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Geratnagar were needed for the public purpose of construction of Ahmedabad-Baroda Express Highway. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on December 1, 1986. The interested persons were thereafter served with notices for determination

of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated March 6, 1987, offered compensation to the claimants at the rate of Rs.3/- per sq.mt. to Rs.5.50 ps. per sq.mt. rendered in LAQ Case No.14 of 1986. The claimants were of the opinion that the offer of compensation made to them by the Special Land Acquisition officer was totally inadequate. Therefore, they filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to

the District Court where they were registered as Land Acquisition Case No.1234 of 1987 to Land Acquisition Case No.1250 of 1987 and Land Acquisition Case No.1253 of 1987.

5. On behalf of the claimants, in all four witnesses were examined. Witness Dahyabhai Motibhai was examined at Ex.13, whereas witness Pankajbhai Khodabhai Patel was examined at Ex.54 and valuer Hapabhai Fulabhai was examined at Ex.37 whereas another valuer Bhikhubhai Ramjibhai Rami was examined at Ex.43.

6. Witness Dahyabhai Motibhai, in his testimony, mentioned that the Express Highway passed through villages Ghodasar, Ramol, Geratnagar, Vanch and Hathijan, and as villages Ramol and Ghodasar were situated on west of village Geratnagar, the claimants were entitled to enhanced compensation. In

support of this claim, the witness produced a map of AUDA at Ex.15. According to this witness, previously, the lands of village Geratpur and village Vanch were acquired for the public purpose of construction of Ahmedabad-Mehemdavad road for which the claimants of the said village were awarded compensation at the rate of Rs.15/- per sq.mt. by the Reference Court vide judgment rendered in Land Acquisition Case No.390 of 1984 to Land Acquisition Case No.401 of 1984, and therefore also, the claimants were entitled to the enhanced compensation. The witness produced previous award of the Reference Court relating to the lands of village Geratpur and village Vanch at Ex.17. It was pointed out by the said witness that the lands of village Vinzol were acquired pursuant to publication of notification issued under Section 4 of the Act in the

official gazette on June 27, 1973, and the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.4/- per sq.mt. to Rs.6.74 ps. per sq.mt. but the Reference Court had awarded additional amount of compensation to the claimants of those cases at the rate of Rs.20/- per sq.mt. and therefore also, the claimants were entitled to enhanced compensation. According to this witness, there were 103 lemon trees and fruit bearing trees also for which he was entitled to grant of additional amount of compensation. It was claimed by the witness that he had constructed RCC house on his acquired land for which he was entitled to compensation of Rs.1,12,000-23 ps. The witness thereafter mentioned that the lands of village Geratpur which were acquired were highly fertile and that each claimant was growing

different crops such as wheat, millet, paddy, etc. and was earning Rs.10,000/- per Vigha per year from the sale of agricultural produces.

7. Witness Pankajbhai Khodabhai Patel, examined at Ex.54, mentioned in his testimony that his land bearing Block No.45 situated at village Geratpur was acquired for Ahmedabad-Baroda Express Highway. The witness mentioned that Ahmedabad-Baroda Express Highway passed from village Ramol to village Geratnagar after which it passed through village Hathijan and village Vanch. What was mentioned by the said witness was that the lands of village Vanch were acquired for the public purpose of construction of Ahmedabad-Baroda Express Highway for which the claimants were awarded Rs.20/- per sq.mt. as additional amount of compensation and therefore, the claim

made by the claimants that they should be awarded compensation at the rate of Rs.50/- per sq.mt. should be accepted. It was pointed out by the said witness that the lands belonging to one Hiradas Kalyandas and another of village Hathijan were acquired for the public purpose of drilling a Well for ONGC with reference to which he was awarded compensation at the rate of Rs.37/- per sq.mt. The witness produced previous award of the Reference Court relating to the lands of village Hathijan at Ex.49. According to this witness, the lands of Mr.Hiradas Kalyandas situated at village Hathijan were similar in all respects to the lands acquired in the instant case and therefore, on the basis of the said award, the claimants were entitled to enhanced compensation. The witness further stated that the lands of village Vinzol were acquired for the public purpose of Vatva-GIDC in

the year 1973 with reference to which the land owners were awarded compensation at the rate of Rs.27.75 ps. per sq.mt. and therefore also, the claimants in the instant case should be awarded enhanced compensation.

In cross-examination, the witness admitted that villages Geratnagar, Hathijan and Vanch were under the jurisdiction of village Panchayats and that village Vinzol was within the limits of Ahmedabad Municipal Corporation. In his cross-examination, the witness further admitted that Railway Station was situated at a distance of three to four kilometers from the village. It was also admitted by him that no accounts were maintained by any claimant to indicate as to what was the income received by the claimants from the sale of agricultural produces.

8. The valuer Hapabhai Fulabhai, who was examined at Ex.37, mentioned that he had visited the land belonging to witness Dahyabhai Motibhai on March 1, 1987, and found that the said land was irrigated land. According to the said witness, the sales relating to the lands of village Geratpur were undervalued in order to save payment of stamp duty and therefore, the Special Land Acquisition Officer was not justified in assessing the market value of the lands acquired on the basis of the Extract of sale instances. The witness produced his valuation report at Ex.38. As per Ex.38, the land of witness Dahyabhai Motibhai was valued at the rate of Rs.2,40,000/- per Hectare. The witness also stated the prices of different trees which were grown on the land of witness Dahyabhai Motibhai. It may be mentioned that this witness also produced the report

relating to the valuation of the lands belonging to one claimant Punjabhai Shakraji at Ex.39.

9. Witness Bhikhubhai Ramjibhai Rami, who was the valuer, examined at Ex.43, also produced his report at Ex.44, indicating price of the farm-house, stable for cattle, plants, water tanks, pipelines, etc., which were found on the lands of witness Dahyabhai Motibhai.

10. Apart from adducing oral evidence, as mentioned above, the claimants also produced documentary evidence in support of their claim for enhanced compensation, with list Ex.47. The claimants produced (1) the previous award of the Reference Court dated January 29, 1990, rendered in Land Acquisition Case No.1308 of 1987 and other cognate matters relating to the lands of village Vanch at Ex.48, (2)

the previous award of the Reference Court relating to the lands of village Hathijan rendered in Land Acquisition Case No.979 of 1979 and 980 of 1978 on September 20, 1990, at Ex.49, (3) the judgment of the High Court rendered in First Appeal No.819 of 1991 indicating that the previous award of the Reference Court relating to the lands of village Hathijan was confirmed by the High Court, (4) the order dated February 4, 1992, passed by the Supreme Court in Petition(s) for Special Leave to Appeal (Civil) No(s).1992 of 1992 indicating that SLP filed against the order of the High Court was dismissed by the Supreme Court, at Ex.51, (5) xerox copy of sale-deed relating to the land bearing Block No.8 of village Geratpur, Taluka: Dascroi, at Ex.52, etc.

11. On consideration of the evidence

adduced by the claimants, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village Vanch produced at Ex.48 was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case and that other awards of the Reference Court relating to the lands of villages Ramol, Vinzol and Hathijan were not relevant at all. In the ultimate analysis, the Reference Court has awarded additional compensation to the claimants at the rate of Rs.16.75 ps. per sq.mt. by the impugned awards giving rise to the instant Appeals.

12. This Court has heard Mr.Gopinath M.Amin, learned counsel for the appellants-claimants in First Appeal No.1279 of 1996 to First Appeal No.1282

of 1996 with First Appeal No.241 of 1997 to First Appeal No.243 of 1997 as well as Mr.Nitin M.Amin, learned counsel for the appellants-claimants in First Appeal No.2213 of 2003 to First Appeal No.2216 of 2003, and Mr.S.S.Shah, learned Government Pleader for the State, at length and in great detail. This Court has also considered the entire original record of reference cases received from the Reference Court.

13. The contention that the Reference Court should have relied upon the previous award of the Reference Court relating to the lands of village Ramol produced at Ex.82 and awarded compensation to the claimants at the rate of Rs.40/- per sq.mt. is devoid of merits. Similarly, the plea raised for claiming enhanced compensation at the rate of Rs.40/- per sq.mt. on the basis of the

previous award of the Reference Court relating to the lands of village Vinzol and village Hathijan also cannot be accepted. From the evidence adduced by the parties before the Reference Court, it is evident that village Geratpur and village Geratnagar are two different villages. Village Geratnagar is between village Bibipura and village Vanch whereas village Geratpur is between village Hathijan and village Badodara. This is quite evident if one has a glance at Ex.15, which is a map of AUDA produced by witness Dahyabhai. From Ex.15, it is further evident that Ahmedabad-Baroda Express Highway passes through village Geratnagar and not through village Geratpur. Therefore, this Court is of the opinion that the Reference Court was justified in not taking into consideration solitary sale instance produced by the claimants relating to the land of village

Geratpur for the purpose of determining compensation payable to the claimants for the lands acquired from village Geratnagar. Further Ex.15, which is the plan of AUDA, makes it more than clear that village Vanch is adjoining to village Geratnagar. Even witness Pankajbhai Khodabhai Patel, in examination-in-chief of his testimony recorded at Ex.54, has mentioned that the boundaries of villages Hathijan, Vinzol, Ramol and Vanch are adjoining to village Geratnagar. It is also mentioned by the said witness that villages Ramol, Geratnagar, Hathijan and Vanch were being governed by Gram Panchayats and that village Vinzol was within the limits of Ahmedabad Municipal Corporation.

14. The record shows that Ex.48 is the award with respect to the lands of village Vanch which were acquired for

the public purpose of construction of Ahmedabad-Vadodara Express Highway road pursuant to the publication of notification issued under Section 4 of the Act in the official gazette on August 20, 1986. In the instant case also, the notification for acquiring the lands of village Geratnagar issued under Section 4 of the Act was published in the official gazette on August 20, 1986. As observed earlier, plan Ex.15 makes it very clear that village Vanch is adjoining to village Geratnagar. Therefore, the previous award of the Reference Court relating to the lands of village Vanch is most comparable for the purpose of ascertaining the market value of the lands acquired in the instant case. Further, the previous award of the Reference Court relating to the lands of village Vanch was produced by the claimants themselves. It was the case

of the claimants that they should be paid compensation on the basis of the said previous award. The previous award relating to the lands of village Vanch was not produced by the acquiring authorities. Therefore, on the facts and in the circumstances of the case, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award produced at Ex.48 for the purpose of determining the market value of the lands acquired in the instant case.

15. As far as Ex.82, which is the previous award of the Reference Court relating to the lands of village Ramol is concerned, this Court finds that village Ramol is adjoining to the limits of Ahmedabad City. The lands of village Ramol had potential value for the industrial as well as commercial

use. Further, it has come on the record of the case that during the hearing of the References before the Reference Court, village Ramol was included within the limits of Ahmedabad Municipal Corporation whereas the record shows that village Geratnagar is situated at a distance of one kilometer from Mehemdavad town. Therefore, this Court is of the opinion that the Reference Court was justified in not taking into consideration the previous award of the Reference Court relating to the lands of village Ramol produced at Ex.82 for the purpose of ascertaining the market value of the lands acquired in the instant case.

16. Similarly, Ex.49, which is the previous award of the Reference Court relating to the lands of village Hathijan, also does not furnish comparable instance in order to ascertain the market value of

the lands acquired in the instant case, from village Geratnagar. It may be mentioned that village Hathijan is well developed village and is falling within the residential zone of AUDA whereas village Geratnagar has small population, the main occupation of which is agriculture. Further, the previous award of the Reference Court relating to the lands of village Hathijan relates to very small area of land in comparison to the extent of lands acquired in the instant case. On the facts and in the circumstances of the case, therefore, this Court is of the opinion that Ex.49 was rightly not taken into consideration by the Reference Court while evaluating the market value of the lands acquired in the instant case.

17. It may be stated that witness Dahyabhai, in his testimony, mentioned

that earlier the lands from village Geratpur and village Vanch were acquired and that the claimants were awarded compensation at the rate of Rs.15/- per sq.mt. In order to substantiate this claim, he produced the award at Ex.17. However, the perusal of Ex.17 makes it clear that the lands of village Vanch were acquired pursuant to the publication of notification under Section 4 of the Act in the official gazette on September 25, 1993, and the lands of village Geratpur were not acquired at all. Further, the date of the publication of notification under Section 4 of the Act which was subject matter of Ex.48 and the date of publication of notification under Section 4 of the Act i the instant case is the same. Therefore, Ex.17, though it relates to the lands of village Vanch, is not relevant for the purpose of determining the market

value of the lands acquired in the instant case.

18. On re-appreciation of evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court on appreciation of evidence adduced before it. The relevant findings of facts are to be found in paragraphs 10 to 14 of the impugned award with which this Court fully concurs. The Reference Court has applied settled principles of law to the proved facts. Therefore, this Court is of the opinion that no case is made out by the learned counsels for the claimants to award additional compensation as claimed in the Appeals.

19. It may be mentioned that First Appeal No.1279 of 1996 to First Appeal No.1282 of 1996 are directed against the judgment dated November 23, 1995,

rendered by the learned Second Joint District Judge, Mirzapur, in Land Acquisition Case No.1252 of 1987 and other cases. A bare reading of paragraph-15 of the award impugned in the abovenumbered Appeals makes it more than clear that the claimants therein had prayed that they should be granted compensation on the basis of the judgment and award dated April 16, 1994 passed by the Reference Court in Land Acquisition Case No.1236 of 1987 to Land Acquisition Case No.1253 of 1987 which are subject matter of challenge in First Appeal No.241 of 1997 to First Appeal No.243 of 1997 and other cognate Appeals. The said prayer was granted by the Reference Court by the impugned award. As this Court has come to the conclusion that no case is made out by the appellants-claimants in First Appeal No.241 of 1997 to First Appeal No.243 of 1997 and other Appeals to

grant additional compensation, First Appeal No.1279 of 1996 to First Appeal No.1282 of 1996 are also liable to be dismissed.

20. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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